(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

SECOND APPEAL NO. 22 OF 2001

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S. D. Lotlikar, Senior Advocate with Ms. S. Naik, advocate for the appellants.

Shri Shivan Dessai, advocate for respondent nos.2 and 3.

CORAM : S. A. BOBDE, J.

DATE : 22nd July, 2004

P.C.:

This Second Appeal is against concurrent findings that the appellants do not have any right in the property from which alienation is made. The appellants claim to be the heirs of one Sonu Naik through his second wife. The property in question was jointly owned by Sonu Naik and one Lazaro. This property was partitioned in the year 1978 after the death of Sonu. Half share came to the heirs of Sonu Naik and the other half went to the share of Lazaro.

2. It appears that the successors of Lazaro made an alienation of the part of the property in favour of the present respondent nos.2 and 3, i.e. Mahableshwar Soiru Naik and Ramakant Ganesh Naik. The courts below have found that in view of the partition between Sonu Naik and Lazaro the present appellants have no right to challenge the alienation from that part of the property which went to the share of Lazaro and his heirs. The First Appellate Court has clearly observed, vide para 10 that if the appellants had any right, it could only be in plot no. 91-A, which came to the share of Sonu's heirs and not in plot 91-B, which went to the share of Lazaro.

3. Indeed, since the appellants' claim through Sonu Naik and his sons by his second wife, they cannot claim any right over the property which has gone to the heirs of Lazaro in a partition between

Sonu and Lazaro. Admittedly, the appellants have not challenged the partition between Lazaro and Sonu Naik. According to the learned counsel for the appellants that is because they were not parties to the partition. That is not a sufficient answer, since if the partition between the heirs of Sonu Naik and Lazaro is valid and there is no challenge, it cannot be reopened. Any alienation made by a person who has received the property in the partition cannot be held to be invalid in such a case.

This appeal does not raise any substantial questions of law.

In the circumstances, I see no merit in this Second Appeal which is hereby dismissed.

S.A. BOBDE, J.

mc.